

Served by Email Copy  
Accepted by Jan Locat  
on 4/15/11 at 12:36P

1 Ken Frakes, #021776  
2 Ryan Hurley, #02460  
3 **ROSE LAW GROUP PC**  
4 6613 N. Scottsdale Road, Suite 200  
5 Scottsdale, Arizona 85250  
6 (480) 505-3931  
7 (480) 951-6993 Fax  
8 kfrakes@roselawgroup.com  
9 rhurley@roselawgroup.com  
10 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 SERENITY ARIZONA, INC., an Arizona  
14 nonprofit corporation; and MEDZONA  
15 GROUP, INC., an Arizona nonprofit  
16 corporation; JANE CHRISTENSEN, a  
17 married woman;

18 Plaintiffs,

19 v.

20 THE ARIZONA DEPARTMENT OF  
21 HEALTH SERVICES, an agency of the  
22 State of Arizona; WILL HUMBLE,  
23 Director of the Arizona Department of  
24 Health Services, in his Official Capacity.

25 Defendants.

No. LC 2011-000410-00101

**SUMMONS**

IF YOU WANT THE ADVICE OF A  
LAWYER, YOU MAY WISH TO CONTACT  
THE LAWYER REFERRAL SERVICE AT  
602-257-4434 OR ON-LINE AT  
WWW.LAWYERFINDERS.ORG. LRS IS  
SPONSORED BY THE MARICOPA  
COUNTY BAR ASSOCIATION

26 **TO THE ABOVE NAMED DEFENDANT(S):**

**YOU ARE HEREBY SUMMONED** and required to appear and defend, in the  
above entitled action within **TWENTY (20) DAYS**, after the service of the  
Summons and Complaint upon you, exclusive of the day of served. If served outside  
the State of Arizona, you shall appear and defend within **THIRTY (30) days**,  
exclusive the day of service.

In order to appear and defend, you must file a proper response or answer in  
writing with the Clerk of this Court, accompanied by the required filing fee. Failure

1 to so appear and defend will result in a judgment by default being rendered against  
2 you for the relief requested in the Complaint.

3 A copy of the complaint may be obtained from the Maricopa County Clerk of  
4 the Superior Court 201 West Jefferson, Phoenix, Arizona 85003.


5 Requests for reasonable accommodations for persons with disabilities must  
6 be made to the Division assigned to the case by parties at least three (3) judicial days in  
advance of a scheduled court processing.

7 You are required by law to serve a copy of your response or answer upon the  
8 Plaintiff(s) addressed as follows:

9 SERENITY ARIZONA, INC., MEDZONA GROUP, INC., and JANE  
10 CHRISTENSEN  
11 c/o Ken Frakes  
12 Rose Law Group pc  
6613 N. Scottsdale Road, Suite 200  
Scottsdale, Arizona 85250

13 SIGNED AND SEALED, this \_\_\_\_\_ day of ~~COPY~~, 2011.

14 MICHAEL K. JEANES  
15 Clerk of the Superior Court

16  MICHAEL K. JEANES, CLERK  
C. ALLEN  
DEPUTY CLERK

17 By \_\_\_\_\_  
18 Deputy Clerk  
19  
20  
21  
22  
23  
24  
25  
26

**COPY**

**JUN 14 2011**



MICHAEL K. JONES, CLERK  
CLERK OF COURT  
MARICOPA COUNTY

Ken Frakes, #021776  
Ryan Hurley, #02460  
**ROSE LAW GROUP PC**  
6613 N. Scottsdale Road, Suite 200  
Scottsdale, Arizona 85250  
(480) 505-3931  
(480) 951-6993 Fax  
kfrakes@roselawgroup.com  
rhurley@roselawgroup.com  
Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
**IN AND FOR THE COUNTY OF MARICOPA**

SERENITY ARIZONA, INC., an Arizona  
nonprofit corporation; and MEDZONA  
GROUP, INC., an Arizona nonprofit  
corporation; JANE CHRISTENSEN, a  
married woman;

Plaintiffs,

v.

THE ARIZONA DEPARTMENT OF  
HEALTH SERVICES, an agency of the  
State of Arizona; WILL HUMBLE,  
Director of the Arizona Department of  
Health Services, in his Official Capacity.

Defendants.

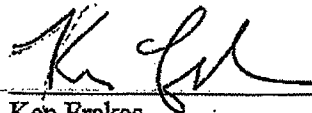
LC 2011 - 000410 - 001 DT  
No.

**CERTIFICATE OF NON-  
COMPULSORY ARBITRATION**

The undersigned certifies that he knows the dollar limits and any other limitations  
set forth by the local rules of practice for the applicable superior court, and further  
certifies that this case is not subject to compulsory arbitration, as provided by Rules 72  
through 76 of the Arizona Rules of Civil Procedure.

1 DATED this 14th day of June, 2011.  
2  
3  
4

5 ROSE LAW GROUP PC  
6



7 Ken Frakes

8 Ryan Hurley

9 6613 N. Scottsdale Road, Suite 200

10 Scottsdale, Arizona 85250

11 *Attorneys for Plaintiffs*  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1 Ken Frakes, #021776  
2 Ryan Hurley, #02460  
3 ROSE LAW GROUP PC  
4 6613 N. Scottsdale Road, Suite 200  
5 Scottsdale, Arizona 85250  
6 (480) 505-3931  
7 (480) 951-6993 Fax  
8 kfrakes@roselawgroup.com  
9 rhurley@roselawgroup.com  
10 Attorneys for Plaintiffs

**COPY**  
JUN 14 2011  
MICHAEL K. JENNIS, CLERK  
C. ALLEN  
DEPUTY CLERK

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 SERENITY ARIZONA, INC., an Arizona  
14 nonprofit corporation; and MEDZONA  
15 GROUP, INC., an Arizona nonprofit  
16 corporation; JANE CHRISTENSEN, a  
17 married woman;

18 Plaintiffs,

19 v.

20 THE ARIZONA DEPARTMENT OF  
21 HEALTH SERVICES, an agency of the  
22 State of Arizona; WILL HUMBLE,  
23 Director of the Arizona Department of  
24 Health Services, in his Official Capacity.

25 Defendants.

No. LC 2011-000410-00107

**COMPLAINT FOR SPECIAL ACTION  
AND APPLICATION FOR ORDER TO  
SHOW CAUSE**

26 For their Complaint and Application for Order to Show Cause pursuant to Rule 4  
of the Rules of Procedure for Special Actions, Plaintiffs Serenity Arizona, Inc.  
("Serenity") and Medzona Group, Inc. ("Medzona"), and Jane Christensen  
("Christensen") ("collectively "Plaintiffs"), hereby allege as follows:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**PARTIES AND JURISDICTION**

1. Serenity is, and at all times relevant hereto was, an Arizona nonprofit corporation authorized to transact and do business in the State of Arizona. Serenity is an aspiring nonprofit medical marijuana dispensary.

2. Medzona is, and at all times relevant hereto was, an Arizona nonprofit corporation authorized to transact and do business in the State of Arizona. Medzona is an aspiring nonprofit medical marijuana dispensary.

3. Christensen is, and at all times relevant hereto was, a married woman residing in Maricopa County, Arizona and an Arizona citizen within the meaning of A.R.S. § 36-2818.

4. Defendant Arizona Department of Health Services (the "Department") is, and at all times relevant hereto was, an agency of the State of Arizona, established by A.R.S. § 36-102(A) with its principal place of business in Maricopa County, Arizona.

5. Defendant Will Humble is the Director (the "Director") of the Arizona Department of Health Services with his principal place of business in Maricopa County, Arizona.

6. As Director of the Department, the Director is responsible for the direction, operation and control of the Department.

7. The Department and the Director may collectively be referred to as "the Defendants."

8. In accordance with the allegations set forth below, the Department is improperly refusing to perform their obligations and non-discretionary duties under the terms of the Arizona Medical Marijuana Act (the "AMMA").

9. Defendants have caused events to occur out of which the subject of this Complaint arose. In particular, Defendants have:

1 a. Failed to properly exercise their discretion under the AMMA and the  
2 corresponding rules, which are set forth in the Arizona Administrative  
3 Code;

4 b. Failed to perform a duty required by law as to which they have no  
5 discretion;

6 c. Proceeded in such a way that they are either without the legal  
7 authority to do so or in excess of their legal authority to do so;

8 d. Made determinations that were arbitrary and capricious; and

9 e. Abused their discretion under the law.  
10

11 10. Plaintiffs bring this special action to obtain relief against Defendants in the  
12 form of an order compelling Defendants to comply with and perform their duties under  
13 the AMMA and the Arizona Administrative Code that govern the Department with regard  
14 to medical marijuana.

15 11. Under A.R.S. § 36-2818, any citizen may commence a mandamus action in  
16 Superior Court to compel the Department to perform the actions mandated by the  
17 AMMA.

18 12. Plaintiffs do not have an equally plain, speedy and adequate remedy by any  
19 appellate procedure and will suffer irreparable injury and damage unless the requested  
20 relief is granted by means of this special action.

21 13. Venue and jurisdiction are proper in this Court in accordance with Rule 4  
22 of Arizona's Rules of Procedure for Special Actions and A.R.S. § 36-2818.

23 **ARIZONA MEDICAL MARIJUANA ACT**

24 14. On November 2, 2010, Arizona voters were asked to consider whether the  
25 State should decriminalize medical marijuana. In Proposition 203, the AMMA  
26 envisioned decriminalizing medical marijuana for use by people with certain chronic and

1 debilitating medical conditions. Qualifying patients would be able to obtain up to two  
2 and a half ounces of marijuana every two weeks from nonprofit medical marijuana  
3 dispensaries or to cultivate their own plants under certain conditions.

4 15. Arizona voters passed the AMMA in November 2010; the Governor signed  
5 it into law on December 14, 2010.

6 16. The AMMA requires the Department to be responsible for implementing  
7 and overseeing the AMMA.

8 17. Specifically, the AMMA provides for the registration and certification by  
9 the Department of "nonprofit medical marijuana dispensaries," "nonprofit medical  
10 marijuana dispensary agents," "qualifying patients," and "designated caregivers."

11 18. Under the AMMA, the Department is mandated to adopt rules governing  
12 the registration and certification process within 120 days after the effective date of the  
13 AMMA.

14 19. Specifically, under A.R.S. § 36-280(B), within 120 days after the AMMA's  
15 effective date, the Department was required to adopt rules:

16  
17 Governing nonprofit medical marijuana dispensaries, for the purpose of  
18 protecting against diversion and theft without imposing an undue burden on  
19 nonprofit medical marijuana dispensaries or compromising the  
20 confidentiality of cardholders, including:

21  
22 (a) The manner in which the Department shall consider  
23 applications for and renewals of registration certificates;

24 (b) Minimum oversight requirements for nonprofit medical  
25 marijuana dispensaries;  
26



1 (c) Minimum recordkeeping requirements for nonprofit medical  
2 marijuana dispensaries;

3 (d) Minimum security requirements for nonprofit medical  
4 marijuana dispensaries, including requirements for protection of  
5 each registered nonprofit medical marijuana dispensary location by a  
6

7 fully operational security alarm system.

8  
9 20. Thus, under the AMMA, the Department is obligated to receive, consider  
10 and process the applications for nonprofit medical marijuana dispensaries.

11 21. As required by the Act, the Department promulgated final rules (the  
12 "Rules") that were filed with the Secretary of State on April 13, 2011. The Rules are set  
13 forth in the Arizona Administrative Code.

14 22. Under AAC R9-17-304(D)(1) of the Rules, an applicant must submit to the  
15 Department an application that includes certain information specified at AAC R9-17-  
16 304(D).

17 23. Under the AMMA, the Department is required to register nonprofit medical  
18 marijuana dispensaries and to issue registration certificates within 90 days after receiving  
19 an application.

20 24. Under the AMMA, the Department is required to register nonprofit medical  
21 marijuana dispensary agents and to issue registry identification cards to qualifying  
22 patients and designated caregivers within certain time frames after receipt of information  
23 and documents from the applying agents, patients and caregivers.

24 25. Nonprofit medical marijuana dispensaries and nonprofit medical marijuana  
25 dispensary agents must be registered by the Department before they can lawfully operate  
26 under the AMMA. Accordingly, under the Rules, the Department was required to

1 receive, consider and process applications for nonprofit medical marijuana dispensaries  
2 and nonprofit medical marijuana dispensary agents on June 1, 2011.

3 26. Under the Rules, beginning August, 2011, the Department must begin  
4 issuing registration certificates for nonprofit medical marijuana dispensaries and registry  
5 identification cards for nonprofit medical marijuana dispensary agents.  
6

7 **DEFENDANTS FAILED TO COMPLY WITH THE ACT**  
8 **AND THE RULES**

9 27. On June 13, 2011, Serenity, in accordance with the AMMA and the Rules  
10 attempted to submit an application for a nonprofit medical marijuana dispensary  
11 registration certificate to the Department.

12 28. On June 14, 2011, Medzona, in accordance with the AMMA and the Rules  
13 attempted to submit an application for a nonprofit medical marijuana dispensary  
14 registration certificate to the Department.

15 29. The Serenity application and the Medzona application may be referred to  
16 collectively as the Applications.

17 30. In violation of the AMMA and the Rules, the Department refused to  
18 receive, consider, and process the Applications and rejected and failed to process them.

19 31. The Director provided a letter to Serenity and Medzona stating that it is not  
20 accepting applications for "nonprofit medical marijuana dispensary registration  
21 certificates." A true and correct copy of those letters are attached as Exhibit A and  
22 incorporated herein by reference.

23 32. In that letter, the Director stated that:

24 Arizona Administrative Code R9-17-304(D)(1) requires an applicant for a  
25 nonprofit medical marijuana dispensary registration certificate to submit an  
26 application to the Department in a Department-provided format.

1 Consistent with the requirement in the rule, the Department will only accept  
2 applications that are submitted in a Department-provided format. Because  
3 of the Governor's request for a declaratory judgment from a federal court  
4 regarding the legality of the AMMA, the Department has not provided a  
5 format for the nonprofit medical marijuana dispensary registration  
6 certificate application.  
7

8 **DEFENDANTS HAVE FAILED TO COMPLY WITH THE AMMA**  
9

10 33. Under A.R.S. §§ 36-2803 and 2804, the Department had the  
11 nondiscretionary duty to receive and consider applications for registration certificates.

12 34. By not receiving and accepting the Applications, and failing to consider the  
13 Applications, the Department is in direct violation of its duties under A.R.S. §§ 36-2803  
14 and 2804.

15 35. Under A.R.S. § 36-2803, the Department had the non-discretionary duty to  
16 establish the form of registration certificate application for the AMMA and to set forth  
17 the "manner" in which the Department shall consider applications.

18 36. By not receiving or accepting the Applications, and by failing to consider  
19 and process the Applications, because the Department "has not provided a format for the  
20 nonprofit medical marijuana dispensary registration certificate application," the  
21 Department is in direct violation of its non-discretionary duties set forth in A.R.S. §§ 36-  
22 2803 and 2804.  
23

24 37. Under A.R.S. § 32-2803 the Department is to govern nonprofit medical  
25 marijuana dispensaries, but not impose "an undue burden on nonprofit medical marijuana  
26 dispensaries."

1           38. By failing to provide a format for a nonprofit medical marijuana dispensary  
2 registration certificate application, the Department is in breach of its non-discretionary  
3 duty of "not imposing an undue burden on nonprofit medical marijuana dispensaries,"  
4 which is set forth in A.R.S. § 32-2803.

5           39. Defendants' actions constitute: (1) a failure to properly exercise discretion;  
6 (2) a failure to perform duties required under the AMMA; (3) actions without legal  
7 authority or in excess of their legal authority; (4) determinations that were arbitrary and  
8 capricious; and (5) an abuse of discretion.

9  
10           **DEFENDANTS HAVE FAILED TO COMPLY WITH THE RULES**

11           40. Under the AMMA, Defendants are required by law to consider and process  
12 applications from aspiring nonprofit medical marijuana dispensaries, to process those  
13 applications and issue nonprofit medical marijuana dispensary registration certificates in  
14 accordance with the Rules.

15           41. Under AAC R9-17-304(D)(1) of the Rules, the Department had the non-  
16 discretionary duty to format an application for nonprofit medical marijuana dispensary  
17 registration certificates.

18           42. The Department is in direct violation of AAC R9-17-304(D)(1) by not  
19 formatting the nonprofit medical marijuana dispensary registration certificate application.

20           43. Under the Rules, the Department "shall accept dispensary registration  
21 certificate applications for thirty calendar days beginning June 1, 2011." AAC R9-17-  
22 303(D).

23           44. Serenity and Medzona attempted to submit the Applications to the  
24 Department on or after June 1, 2011, but the Department refused to receive, consider, and  
25 process the Applications.  
26

1       45. The Department is in direct violation of AAC R9-17-303(D) by not  
2 accepting the Applications.

3       46. Under AAC R9-17-107(A) of the Rules:

4       Within the administrative completeness review time-frame for each type of  
5 approval in Table 1.1 [of AAC R9-17-107(A)], the Department shall:  
6

- 7       1. Issue a registry identification card or dispensary registration certificate;  
8       2. Provide a notice of administrative completeness to an applicant; or  
9       3. Provide a notice of deficiencies to an applicant, including a list of the  
10 information or documents needed to complete the application.  
11

12       47. Therefore, under AAC R9-17-107(A) of the Rules, upon receipt of an  
13 application, the Department must consider and process the application and either: (1)  
14 issue a dispensary registration certificate; (2) provide a notice of administrative  
15 completeness to Applicant; or (3) provide a notice of deficiency to an Applicant.  
16

17       48. Serenity and Medzona provided the Applications to the Department, but the  
18 Department refused to receive, consider, and process the Applications, and otherwise  
19 refused to comply with its obligations under AAC R9-17-303(D) and AAC R9-17-  
20 107(A) to either issue a dispensary registration certificate; or provide a notice of  
21 administrative completeness; or provide a notice of deficiency.

22       49. By not receiving, considering, or processing the Applications, the  
23 Defendants have: (1) failed to properly exercise their discretion under the AMMA and  
24 the Rules; (2) failed to perform their duties required under the AMMA and the Rules to  
25 which they have no discretion; (3) proceeded without legal authority and in excess of  
26 their legal authority under the AMMA and the Rules; (4) acted in an arbitrary and

1 capricious manner with regard to their obligations and duties under the AMMA and the  
2 Rules; and (5) abused their discretion with regard to their obligations and duties under the  
3 AMMA and the Rules.

4 50.. Plaintiffs do not have an equally plain, speedy and adequate remedy by any  
5 appellate procedure and will suffer irreparable injury and damage unless the requested  
6 relief is granted by means of this special action.

7 THEREFORE, Plaintiffs request the following relief:

8 A. An order compelling the Department to provide an application format for  
9 nonprofit medical marijuana dispensary registration certifications applications;

10 B. An order compelling the Department to receive, consider, and process the  
11 Applications in accordance with the AMMA and the Rules;

12 C. An order compelling the Department to receive, consider, and process all  
13 other applications submitted in accordance with the AMMA and the Rules;

14 D. An order compelling the Department to implement and perform all its  
15 obligations and duties under the AMMA and the Rules; —

16 E. An Order awarding to Plaintiffs their reasonable attorneys' fees and costs  
17 incurred pursuant to R.4(g) of the Rules for Special Actions and other Governing Laws;

18 F. Judgment for such other relief as the Court deems just and proper;

19 G. An order issued pursuant to Rule 4 of the Rules for Special Actions  
20 directing the Defendants to appear before this court and show cause, if any, why the relief  
21 requested should not be granted.  
22  
23  
24  
25  
26

1 Respectfully submitted this 14<sup>th</sup> day of June, 2011.  
2  
3

4 ROSE LAW GROUP PC  
5   
6

7 Ken Frakes  
8 Ryan Hurley

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

6613 N. Scottsdale Road, Suite 200

Scottsdale, Arizona 85250

*Attorneys for Plaintiffs*

---

## **EXHIBIT A**



Arizona  
Department of  
Health Services

Office of the Director

150 N. 18th Avenue, Suite 500  
Phoenix, Arizona 85007-3247  
(602) 542-1025  
(602) 542-1062 FAX  
Internet: [www.azdhs.gov](http://www.azdhs.gov)

JANICE K. BREWER, GOVERNOR  
WILL HUMBLE, DIRECTOR

Date:

6/13/11

Time:

9:11 am

Dear

Serenity AZ, DMC

Thank you for your interest in applying for a nonprofit medical marijuana dispensary registration certificate.

Based on the Governor's request for a declaratory judgment from a federal court regarding the legality of the Arizona Medical Marijuana Act (Act), the Arizona Department of Health Services (Department) is not accepting applications for nonprofit medical marijuana dispensary registration certificates at this time.

As required by the Act in § 36-2803(A), the Department promulgated rules for the Medical Marijuana Program within 120 days after the effective date of the Act. The rules were submitted to the Office of the Secretary of State and took effect on April 14, 2011.

Arizona Administrative Code R9-17-304(D)(1) requires an applicant for a nonprofit medical marijuana dispensary registration certificate to submit an application to the Department in a Department-provided format. Consistent with the requirement in the rule, the Department will only accept applications that are submitted in a Department-provided format. Because of the Governor's request for a declaratory judgment from a federal court regarding the legality of the Act, the Department has not provided a format for the nonprofit medical marijuana dispensary registration certificate application.

For updated information about nonprofit medical marijuana dispensary registration certificate applications, please refer to the Department's Medical Marijuana Program website at <http://www.azdhs.gov/medicalmarijuana>.

Sincerely,

Will Humble  
Director

Leadership for a Healthy Arizona

**Arizona  
Department of  
Health Services**

*Office of the Director*

150 N. 18th Avenue, Suite 500  
Phoenix, Arizona 85007-3247  
(602) 542-1025  
(602) 542-1062 FAX  
Internet: [www.azdhs.gov](http://www.azdhs.gov)

JANICE K. BREWER, GOVERNOR  
WILL HUMBLE, DIRECTOR

Date: 6/14/2011

Time: 8:30 A

Dear Medzona, Inc.:

Thank you for your interest in applying for a nonprofit medical marijuana dispensary registration certificate.

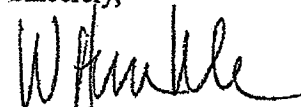
Based on the Governor's request for a declaratory judgment from a federal court regarding the legality of the Arizona Medical Marijuana Act (Act), the Arizona Department of Health Services (Department) is not accepting applications for nonprofit medical marijuana dispensary registration certificates at this time.

As required by the Act in § 36-2803(A), the Department promulgated rules for the Medical Marijuana Program within 120 days after the effective date of the Act. The rules were submitted to the Office of the Secretary of State and took effect on April 14, 2011.

Arizona Administrative Code R9-17-304(D)(1) requires an applicant for a nonprofit medical marijuana dispensary registration certificate to submit an application to the Department in a Department-provided format. Consistent with the requirement in the rule, the Department will only accept applications that are submitted in a Department-provided format. Because of the Governor's request for a declaratory judgment from a federal court regarding the legality of the Act, the Department has not provided a format for the nonprofit medical marijuana dispensary registration certificate application.

For updated information about nonprofit medical marijuana dispensary registration certificate applications, please refer to the Department's Medical Marijuana Program website at <http://www.azdhs.gov/medicalmarijuana>.

Sincerely,



Will Humble  
Director